

ORIGINAL

BEFORE THE BOARD OF OIL, GAS AND MINING  
DEPARTMENT OF NATURAL RESOURCES  
in and for the STATE OF UTAH

IN THE MATTER OF THE )  
VIOLATION OF MC-800 AND )  
RULE M-3, OF THE BOARD OF )  
OIL, GAS, AND MINING BY )  
CO-OP MINING COMPANY, )  
CO-OP MINE, EMERY COUNTY, )  
UTAH. )

CAUSE NO. ACT/043.001/

BE IT REMEMBERED that on the 29th day  
of November, 1978, a hearing was held before the  
Board of Oil, Gas and Mining in the above-entitled  
matter, and said hearing was taken before Athena  
Moore, a Certified Shorthand Reporter and Notary Public  
in and for the State of Utah, holding Utah C.S.R.  
License No. 88, commencing at the hour of 11:00 a.m.  
in the Executive Conference Room, Holiday Inn, 1659  
West North Temple, Salt Lake City, Utah.

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A P P E A R A N C E S

Charles R. Henderson, Chairman  
Board of Oil, Gas & Mining

John Bell, Board Member  
C. Ray Juvelin, Board Member  
Ray McIntyre, Board Member

Ron Daniels, Coordinator  
Mined Land Reclamation

Cleon B. Feight, Director  
Division of Oil, Gas & Mining

Sheree Wilcox  
Administrative Assistant  
Division of Oil, Gas & Mining

Murray Smith  
Office of Surface Mining

Mr. Dewsnap  
Ms. Denise Dragoo  
Attorney General's Office

Carl Kingston  
Attorney at law for  
Co-op Mine

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1                                    P R O C E E D I N G S

2                    MR. CHAIRMAN: This is the time and place  
3 set for the hearing in the matter of the violation of  
4 MC-700 and Rule M-3 of the Board of Oil, Gas and  
5 Mining by Co-op Mining Company, Co-op Mine, Emery  
6 County, Utah.

7                    This is an order to show cause and numbered  
8 as ACT/015/021. The file indicates that proper notice  
9 has been given and that it has been advertised in the  
10 newspaper. The file also indicates that the order was  
11 served by the sheriff and there is a letter here from  
12 Mr. Wendell J. Owen of Co-op Mining Company which  
13 probably should be read into the record. Would you  
14 like to read that into the record, Mr. Kingston?  
15 State your name into the record, first.

16                   MR. KINGSTON: My name is Carl Kingston.  
17 I am an attorney at law. I represent Co-op Mining  
18 Company in this matter. I might state for the record  
19 by way of an apology to the members of the Board that  
20 I received a phone call from Mr. Wendell Owen yesterday  
21 afternoon about 3:30. He indicated to me that he was  
22 supposed to appear before the Board this morning, but  
23 that he was recuperating from a hernia operation and  
24 could not appear.

25                   He also indicated that he had submitted a

1 letter to the Board explaining the reason why he would  
2 not be able to appear. I would agree with the Board  
3 that the letter should be read into the record at this  
4 time. I don't have a copy of it. I would be happy  
5 to read your letter.

6 MR. CHAIRMAN: Fine. You may read it into  
7 the record.

8 MR. KINGSTON: This is a letter on the  
9 letterhead of Co-op Mining Company and it's dated  
10 November 24, 1978 and directed to the State of Utah,  
11 Division of Oil, Gas & Mining.

12 The letter reads:

13 "In response to order to show cause No.  
14 ACT/015/021, to appear at the hearing to be held on  
15 Wednesday, November 29th, I would like to state my  
16 willingness to comply, but inability to attend at that  
17 date, as I have been previously scheduled to enter the  
18 hospital for an operation on November 27th. My  
19 physician is Dr. Keith Greaves, and I will enter the  
20 Cottonwood Hospital.

21 There is no other person in our organiza-  
22 tion who is familiar with this program of compliance  
23 to replace me at the hearing but we could have legal  
24 counsel present if it would help.

25 We hope that the preliminary plans submitted

1 to the Division on November 24 will indicate our intent  
2 to comply. We have already installed the sign at the  
3 beginning of the access road, have put out the fires  
4 and taken steps to prevent future fires, and have cleaned  
5 the debris out of Trail Creek. We are working with an  
6 engineering firm on the design for a drainage system.  
7 The basic prints have been submitted to the Division  
8 and the drawings for some of the details are being  
9 prepared at present.

10 We will agree to a reasonable time schedule  
11 for completion of the drainage system as soon as the  
12 plans are approved by the Division, weather permitting.

13 We have submitted proposals for surface and  
14 underground water monitoring programs, subject to  
15 approval; and intend to apply for a NPDES discharge  
16 permit.

17 We request that the schedule for our  
18 compliance be set at this hearing, or that our hearing  
19 is postponed until the next board meeting.

20 Respectfully, Wendell J. Owen."

21 MR. FEIGHT: Mr. Chairman, for the record,  
22 Co-op was not officially served. Mr. Owen came into  
23 the office on his own volition. I would like to point  
24 out that Mrs. Denise Dragoo who is the Special Assistant  
25 Attorney General could just go through the process of

1 informing you about this case and what their recom-  
2 mendations are.

3 MR. CHAIRMAN: Before we have Denise start,  
4 is it my understanding that we are enforcing here,  
5 parts of the rules and regulations of the surface  
6 mining division and there is a representative here?

7 MR. FEIGHT: From OSM we have Murray Smith.

8 MR. MAURY SMITH: My name is Murray Smith.  
9 I am from the Region Five Office of the Office of  
10 Surface Mining.

11 MR. CHAIRMAN: Do you intend to make a  
12 statement on the record or at some time or are you  
13 here strictly to listen?

14 MR. SMITH: It was not my intent to make  
15 a statement for the record. I just came to observe.  
16 Our Regional office is rather newly established and  
17 we are making a strong effort on our part to become  
18 familiar with the operations of the State Reclamation  
19 Enforcement activity, so I came here basically just to  
20 observe a Board meeting. I would be glad to answer  
21 some questions if they come up.

22 MR. CHAIRMAN: Do feel free to make a comment  
23 as we go into this. It is relatively new to us, too.  
24 You're not entirely by yourself, but this starts out  
25 with the case that has some exceptions to it and we'll

1 go back to it and see what we can do with it.

2 Would you like to go ahead, Denise, and  
3 bring us up to date?

4 DENISE DRAGOO: Yes. For the record, I  
5 am Denise Dragoo. I represent the Division on matters  
6 concerning the Mined Land Reclamation Act. Today the  
7 Division has brought four matters concerning the  
8 Mined Reclamation Act, and to bring it to the attention  
9 of the Board, Co-op is one of the two co-mines that  
10 we served with process. Co-op Mining and Blackhawk  
11 were the two mines served with notice of the violation.  
12 And under 40-8-8(4) that is apparently what we are  
13 proceeding under right now. I will read that to you:

14 "Whenever it shall appear that any person,  
15 owner, or operator is violating any provision of this  
16 Act, or any rule, regulation, or order made under this  
17 act, the Board shall call a hearing to review the  
18 facts in the case. All persons known to be affected  
19 and the alleged violators shall be given an opportunity  
20 to be heard. If, following this hearing, the Board  
21 finds a violation it may issue an abatement or a  
22 compliance order, or, at its election, bring suit in  
23 the name of the state against such person or operator  
24 in any court in the state having jurisdiction in the  
25 county of residence of any defendant or in the county

1 where the violation is alleged to have occurred."

2 That's basically the statute in which we  
3 are bringing these proceedings.

4 Today, we would like to present the  
5 Division witnesses which will present evidence to  
6 establish that there was a violation under the Mined  
7 Land Reclamation Act; specifically Section 40-8-7(g)  
8 and Rule M-7 and Rule MC-700 which prohibit operation  
9 in this state without a state permit.

10 We will attempt to establish that that  
11 operation was occurring without the proper permit pro-  
12 cedures. Finally, the Division will recommend some  
13 compliance schedules of these operations. The  
14 second two matters will be those concerning the Soldier  
15 Canyon Mine and the Vipont Mines who were asked to  
16 present evidence prior to the state's hearing. The  
17 letter that we sent them indicated that if they did  
18 not present evidence by today's hearing, a recommendation  
19 would be made, that the Board would either produce  
20 operators for prosecution and according to 40 -8-9(3)  
21 basically that requires that any person, owner or  
22 operator who willfully or knowing evades this Act by  
23 failing to submit the proper requirements for the permit  
24 may basically be referred for prosecution for a violation,  
25 and the punishment would be a misdemeanor and a fine of



1 not more than \$10,000 for each violation. So that is  
2 one alternative, or we could subpoena these operators  
3 to appear before the Board in the next hearing.

4 In the Co-op case, right now, I would like  
5 to present Ron Daniels, if I could.

6 MR. CHAIRMAN: Just a minute. I feel,  
7 Denise, in this case the man has admitted in his letter  
8 that he is in violation. He has submitted the plans  
9 and he is in the hospital. I'm wondering if we're  
10 going to accomplish anything by proceeding. The  
11 attorney has said that they were just notified and  
12 really not able to carry forward on this case. I would  
13 be inclined to discuss with the Board here for just a  
14 minute if we just shouldn't continue the case and give  
15 him until the next meeting. I understand the seriousness  
16 of the situation, but to go forward without proper  
17 personnel here and if we want to take action for not  
18 being here because he is definitely in the hospital.

19 MRS. DRAGOO: Mr. Chairman, the reason we  
20 are pursuing these proceedings today, we recognize that  
21 Mr. Owen may be going into the hospital, but basically  
22 we are trying to coordinate our activities with that  
23 of the Federal Government who have also issued a notice  
24 of violation in this particular case, and they have  
25 given us, by letter by Don Crane until this date to

1       come up with a compliance schedule of Co-op Mining,  
2       and to the extent we don't, they will go forward with  
3       their notice of violation. So that is why we thought  
4       that perhaps we could set up some sort of a compliance  
5       schedule that will set forth what was necessary to meet  
6       the requirements of the Act and a time schedule by  
7       which to meet those requirements. If we could do that,  
8       the Federal Government, as I understand, will coordinate  
9       their efforts with our compliance schedule, and there  
10      will be only one action instead of two. It's just our  
11      concern and want to avoid duplicate proceedings.

12           MR. CHAIRMAN: I am not aware of the letter  
13      that you referred to a while ago from the Office of  
14      Surface Mining.

15           MRS. DRAGOO: We have it right here.

16           MR. CHAIRMAN: Let me ask this question: Are  
17      you in the position to say if they object or if we  
18      kept the case active until the next month, would that  
19      be improper in your position?

20           MR. SMITH: There are certain time constraints  
21      we have on ourselves. I think those are outlined. We  
22      have sent copies to Denise. Denise has copies of our  
23      notice. We are limited to the amount of time we can  
24      set for abatement of an order to 90 days, for complete  
25      abatement of that order, and in order to file a mining

1 claim, and have a mining plan completed in 90 days,  
2 I believe--I haven't seen what Co-op Mining has  
3 filed.

4 MR. CHAIRMAN: I haven't either.

5 MR. SMITH: But I believe that time is  
6 running short on that. It's been almost 30 days now  
7 since you issued the notice. At least 60 days in our  
8 time limitations to have approved a permit by the  
9 State of Utah. I think that we are pressed for time  
10 in that respect. I would have to see as you would what  
11 has been filed.

12 MR. CHAIRMAN: The letter makes reference  
13 to--do they not say they have submitted a preliminary  
14 plan?

15 MR. FEIGHT: I think the staff could answer  
16 the question. Ron, could you explain it to the  
17 Chairman?

18 MR. DANIELS: Yes. We received by personal  
19 visit from Mr. Owen on the 24th of November a set of  
20 preliminary plans, and among them were a map which  
21 we were prepared to enter into the record; a surface  
22 water control plan; a revegetation plan; a paragraph  
23 which deals with underground water, and a description  
24 of underground water association with the mine; a  
25 statement which addresses the coal fire and the work

1 which Co-op has done on that fire, and what plans they  
2 have for contingency type plans on abating the fire.

3 MR. CHAIRMAN: Is there a plan that you  
4 are saying that you would like to introduce?

5 MR. DANIELS: Yes.

6 MR. CHAIRMAN: The Board will have a few  
7 minutes for consulting. Just wait a few moments.

8 (Whereupon an off the record discussion  
9 was held.)

10 MR. CHAIRMAN: After consultation, we  
11 decided that we probably should proceed with the  
12 case and we should have from the Attorney General's  
13 office, Denise Dragoo go through with the case and  
14 there probably will be some questions. Would you  
15 like to proceed?

16 DENISE DRAGOO: Thank you, Mr. Chairman.  
17 Just in summary, the case that the State plans to  
18 prove today will basically consist of the following.  
19 We'll have Ron Daniels from the Division testify as  
20 to an investigation having been conducted as to the  
21 fact that the Co-op Mining operation was notified of  
22 the violations that founded the investigation and  
23 that there was proper response taken by the mining  
24 operation, and finally certain recommendations of  
25 the Division in that regard, so if I can call now

1 Ron Daniels from the Division.

2 MR. KINGSTON: Mr. Chairman, before we  
3 proceed, I would like to make an objection on behalf  
4 of Co-op Mining to proceed in the absence of having  
5 the proper representative of Co-op Mining. I understand  
6 the State is going to proceed, but I do want the record  
7 to show that my objection has been made.

8 MR. CHAIRMAN: We recognize your objection  
9 and will take it under consideration.

10 RONALD W. DANIELS,  
11 called as a witness by and on behalf of the State of  
12 Utah, being first duly sworn, was examined and  
13 testified as follows:

14 EXAMINATION

15 BY DENISE DRAGOO:

16 Q Mr. Daniels, will you state your name  
17 for the record?

18 A Ronald W. Daniels.

19 Q And where is your place of employment?

20 A Utah Division of Oil, Gas & Mining.

21 Q What is your position?

22 A Coordinator of Mined Land Development.

23 Q And what educational background do you  
24 have that qualifies you for this position?

25 A I was employed for several years with the

1 State Division of Forestry as a natural resource  
2 management person. I've worked on several natural  
3 resource problems in the capacity with that Division  
4 and in 1975 started working to enforce the Utah Mined  
5 Reclamation Act in the same capacity that I am in now.

6 Q Can you tell me did you participate in  
7 a on-site inspection of Co-Op Mine in Emery County,  
8 Utah, on November 1, 1978?

9 A Yes.

10 Q Who participated with you at that time?

11 A The representatives of the State were  
12 myself and Mary Ann White, the Division Biologist;  
13 the representatives from the Office of Surface Mining  
14 were Mr. Murray Smith who is present here today; Mr.  
15 Thomas Emmett was there. He is an inspector for the  
16 Office of Surface Mining also; and the representatives  
17 of the company during that visit that we contacted  
18 were Mr. Ferrel Stoter and Mr. Wendell Owen. However,  
19 Mr. Owen was the one who took us around the operation.

20 Q And what did you find in making this  
21 inspection?

22 A We found that there were several objection-  
23 able problem areas that could have, in our opinion,  
24 been a violation under the Utah Mined Reclamation  
25 Act, but generally it was an overview of the operation

1 to see and to inform Co-op what they needed to do to  
2 comply.

3 Q Do you recognize this document as being a  
4 record of that on-site inspection?

5 A Yes. This is the Office of Surface  
6 Mining Report.

7 Q If there are no objections, I would like  
8 to submit that to the Board.

9 MR. KINGSTON: May I take a look at that,  
10 please?

11 DENISE DRAGOO: Yes. We will call this  
12 Exhibit 1.

13 (Whereupon Co-op Exhibit No. 1 was marked  
14 for identification.)

15 MR. KINGSTON: Will you qualify as to who  
16 prepared that and when?

17 DENISE DRAGOO: Yes.

18 Q (By Denise Dragoo) Perhaps you can qualify  
19 this, Mr. Daniels. Can you indicate who prepared this  
20 and when it was prepared?

21 A This was prepared by--

22 MR. CHAIRMAN: --you're talking about proposed  
23 Exhibit 1?

24 DENISE DRAGOO: Yes, Mr. Chairman, Co-op  
25 No. 1.

1 THE WITNESS: This was prepared by  
2 Mr. Tom Ehmett of the Office of Surface Mining. I  
3 can assume it was prepared some time after November 1  
4 by him.

5 Q (By Denise Dragoo) If there are no  
6 further objections, then I ask the Board accept it  
7 into evidence.

8 MR. KINGSTON: Is Mr. Ehmett present today  
9 regarding the document?

10 MR. CHAIRMAN: I don't think so.  
11 Will you tell us what it is about?

12 DENISE DRAGOO: Okay. The violations  
13 reported in this on-site inspection are primarily in  
14 regards to the interim regulations. The fact that  
15 it is noted that they were primarily concerned here  
16 with on page 3, Item No. 1 "Problems and Violations  
17 Noted During the Inspection; 1. No state permit has  
18 been received at this site. This is a violation of  
19 the Federal Act. A state permit shall be obtained."  
20 That's basically what we want to establish.

21 MR. CHAIRMAN: Mr. Kingston, did you want  
22 to object to this being introduced?

23 MR. KINGSTON: I don't think it's been  
24 properly qualified. It would be hearsay. It may be  
25 proper for an administrative hearing, but unless Mr.



1 Emmett is here to testify regarding why he made those  
2 comments and whether they are factual, I don't think  
3 it is properly introduced.

4 DENISE DRAGOO: I think the fact that  
5 Ron Daniels was in attendance at that same inspection,  
6 and the fact that it was submitted to Ron Daniels after  
7 that inspection, I think that he is familiar with the  
8 document. Therefore, I think it qualifies.

9 MR. KINGSTON: Certainly Mr. Daniels would  
10 be qualified to testify as to what he saw and in  
11 fact, if he saw what the letter indicates, he can  
12 testify to that fact.

13 MR. CHAIRMAN: Will you go ahead and ask  
14 him some questions to qualify it before it is  
15 accepted?

16 DENISE DRAGOO: Basically, Mr. Daniels,  
17 did you make similar observations to those listed  
18 by Tom Emmett in this report?

19 THE WITNESS: Yes. I would basically  
20 agree with the items listed on page 3 under "Problems  
21 and Violations Noted During the Inspection." They are  
22 listed numbers one through five on that page. If  
23 you would like me to, I will go over them.

24 MR. CHAIRMAN: Won't you go over them for  
25 the record, then?

REMOVAL  
FILE

1 THE WITNESS: Number one is "NO" state  
2 permit has been received at this site. This is a  
3 violation of #) UCS 502(a). A state permit shall be  
4 obtained.

5 2. No mine permit identification sign  
6 exists at the public entrance to the mine. This is  
7 a violation of 30 CFR 717.12. All required signs  
8 shall be erected.

9 3. A surface water monitoring and ground  
10 water monitoring program has not been submitted to  
11 the State Regulatory Authority for approval and  
12 implemented. Violation of 30 CFR 717.17.

13 4. No sediment control and collection  
14 system is in existence at the site. Violation of 30  
15 CFR 717.17

16 5. There is a coal waste fire in two loca-  
17 tions at the site. This should be extinguished and  
18 a plan implemented to handle this in the future.  
19 Violation P.L.95-87 Sect. 515b(14) and 30 CFR 717.14."

20 I would agree with numbers one through  
21 five.

22 MR. CHAIRMAN: I think under those conditions  
23 we will accept it as an exhibit. It may be admitted.

24 (Whereupon Co-op Exhibit No. 1 was received  
25 in evidence.)

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1 DENISE DRAGOO: Thank you, Mr. Chairman.  
2 I will continue my questioning.

3 Q (By Denise Dragoo) As a result of this  
4 inspection, did the Division take any action?

5 A Yes, that is the purpose of this hearing  
6 today.

7 Q Was a letter sent to Co-op Mining regarding  
8 the violations found at that inspection?

9 A A letter generally saying that they had  
10 not complied with the State law and did not have a  
11 State permit and there were several things which they  
12 had not responded to the Division as yet was sent to  
13 Co-op Mining.

14 Q As a result of this inspection, did the  
15 Office of Surface Mining take any action?

16 A Yes. I believe the Office of Surface  
17 Mining issued to Co-op Mining a Notice of Violation  
18 on these five points.

19 MR. CHAIRMAN: Do you believe that; you've  
20 seen it?

21 THE WITNESS Yes. I don't have a copy  
22 of it right before me. Maybe Denise does.

23 DENISE DRAGOO: It was in the November 9th  
24 letter that we submitted earlier.

25 MR. CHAIRMAN: This one right here?

1 DENISE DRAGOO: Yes, that's it.

2 MR. CHAIRMAN: All right. Proceed.

3 Q (By Denise Dragoo) What response did  
4 Co-op Mining make to the Order to Show Cause sent to  
5 them in the letter of November 8?

6 MR. CHAIRMAN: Would you repeat that,  
7 Denise?

8 Q (By Denise Dragoo) What response did  
9 Co-op Mining make to the letter of November 8 from  
10 the State Division of Oil, Gas & Mining?

11 A As you know, the letter was not properly  
12 served, but on the visit into the office it was  
13 given to Mr. Owen, and even before he received the  
14 letter he was in our office giving us more information  
15 on how their compliance would take place in response  
16 to the Federal notice.

17 Essentially, on the 24th of November,  
18 Mr. Owen brought in some information to us which  
19 told about the proposed actions on the Co-op Mine.

20 Q And would you like to describe for the  
21 record what information was submitted?

22 A Yes. I suppose I could ask you to enter  
23 this into evidence as another exhibit. It's a  
24 proposal submitted by Co-op Mining on the company  
25 letterhead. It is undated, but it is dated as being

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received by the Division on November 24th.

MR. CHAIRMAN: Are you proposing that as an exhibit?

DENISE DRAGOO: Yes. The Division proposes it as Co-op Exhibit 2, the response of Co-op Mining Company which was filed with the Division on November 24.

(Whereupon Co-op Exhibit No. 2 was marked for identification.)

MR. KINGSTON: We have no objection to it, Mr. Chairman.

DENISE DRAGOO: Mr. Chairman, there being no objection, we move that it be received in evidence.

MR. CHAIRMAN: It may be accepted as an exhibit. Just qualify it a little bit. As I understand it it was admitted by Mr. Owen?

THE WITNESS: That's correct.

MR. CHAIRMAN: It may be admitted.

(Whereupon Co-op Exhibit No. 2 was received in evidence.)

THE WITNESS: The things which are included on this communication received by the Division on November 24 deal with surface water control, revegetation, underground water, and coal and waste material fires. I would like to point out that in addition to this four-page document, Mr. Owen submitted a map of

1 the operation and described to both myself and Mr.  
2 Minder and other members of the staff that this map  
3 had been prepared by a registered professional engineer,  
4 and that it was the beginning of their drainage plan for  
5 the surface facilities of the Co-op mine. This probably  
6 should be entered into the evidence.

7 DENISE DRAGOO: If there are no objections,  
8 I request that the Board accept Exhibit 3, Co-op No. 3.

9 MR. KINGSTON: No objection as to what it  
10 purports to be.

11 MR. CHAIRMAN: Did I understand there  
12 would be no objection?

13 MR. KINGSTON: As to what it purports to  
14 be as submitted by Mr. Owen.

15 MR. CHAIRMAN: It will be accepted.

16 (Whereupon Co-op Exhibit No. 3 was marked  
17 for identification and received in evidence.)

18 THE WITNESS: I think the record should  
19 show that only one of these copies was dark enough  
20 to indicate the stamp of the registered professional  
21 engineer on it, and it is stamped by Mr. William V.  
22 Hargraves, registered professional engineer, State  
23 of Utah, No. 1782. Mr. Hargraves is a consulting  
24 engineer located at 3816 Eastwood Lane, Salt Lake  
25 City.

1                   During his visit Mr. Owen also indicated  
2                   that an engineering firm was working on the design  
3                   plans for a sediment control structure which is  
4                   pictured on this map, and it is labeled "The Drainage  
5                   Pond " and that the engineers working on this design  
6                   had not quite completed it as yet, but that the final.  
7                   design would comply with the Division Rule MC717.17

8                   Q           (By Denise Dragoo) Did you also receive  
9                   a letter on November 24 from Mr. Wendell Owen?

10                  A           The letter wasn't received that day, but  
11                  we asked Mr. Owen to submit one since he said he was  
12                  scheduled to be in the hospital.

13                  Q           That letter has basically been read into  
14                  the record already, is that correct?

15                  A           Yes.

16                  Q           Do you notice on that letter that Mr.  
17                  Wendell Owen asked the compliance schedule be compiled  
18                  at this hearing?

19                  A           Yes. The last paragraph states: "We request  
20                  that the schedule for a compliance be set at this  
21                  hearing."

22                  Q           Based on the submissions of Mr. Owens and  
23                  this letter, what type of compliance schedule are you  
24                  prepared to recommend to the Board?

25                  A           I would recommend that Co-op Mining be

1 given a chance to refine these plans as received by  
2 the Division on November 24 somewhat, possibly put  
3 in some more detail and some of the hydrologic side  
4 of it since a hydraulologist has not actually had a  
5 chance to review it, and also show that some of the  
6 work has been done by Co-op Mining already. I  
7 understand, according to Mr. Owen, that the signs  
8 had been installed, that the fire has been extinguished,  
9 and that there are plans to abate the fire when it  
10 pops up again which they think it will do. But I  
11 would suggest that the Board give Mr. Owen 30 days  
12 possibly, to come up with the refinements to this plan,  
13 and then allow a 90 day period from today's date to  
14 obtain the State permit which we would issue upon  
15 the receipt of the things after 30 days.

16 Q If there are not any further questions  
17 of Mr. Daniels, I have none.

18 MR. KINGSTON: I just have a few.  
19 I don't know whether Mr. Daniels can answer these  
20 or not. I might state for the record I would not  
21 have any objection to a system of compliance being  
22 put into effect. I think what we need is what the  
23 objections are that we need to comply with. If we  
24 could have some specifics on it. I understand Mr. Owen  
25 is, and you can correct me if I'm wrong, has cooperated



1       probably to the best of his ability in trying to find  
2       out what needs to be done to comply with your require-  
3       ments. If there is a problem, I think it is because  
4       there is some misunderstanding or lack of communication.  
5       If we can receive today, some kind of an outline of  
6       the specifics that you would require that we would  
7       comply with by a certain date, we could live with that.

8               DENISE DRAGOO: I think we can probably  
9       come up with a compliance schedule specifying the  
10      time frame and the specific objectives, if that will  
11      be satisfactory.

12             MR. KINGSTON: If it would meet with  
13      the approval of the Board. I don't feel like binding  
14      my client right now to a compliance schedule without  
15      first seeing that they've got to comply with. I  
16      might point out just a couple of items on Exhibit No.  
17      1, if I can see that again, and as I noticed reading  
18      through it very briefly; for instance, the paragraph  
19      headed 717.17 "Water Quality Standards and Effluent  
20      Limitations," and it mentions a stream which apparently  
21      has to be monitored. But at the time the inspection  
22      was made the stream was so small it couldn't be  
23      monitored. What is Co-op Mining Company supposed  
24      to do with the water on the site that isn't sufficient  
25      for tests to be made? No sedimentation ponds exist.

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COTTON CONTENT

1 Yet, at the time the inspection was made, the only  
2 water running through the area was absorbed into the  
3 road before it got outside of the area. What type  
4 of a pond has to be provided in order to take care  
5 of the water that apparently isn't there. Maybe the  
6 regulations provide for these things. But these are  
7 the problems that Co-op Mining has.

8 DENISE DRAGOO: I believe you will find  
9 those requirements at MC 717 of the Division's Rules  
10 and Regulations, in that orange manual there.

11 MR. KINGSTON: The thing I am concerned  
12 with, members of the Board, is again I'm sure that  
13 the law requires that we do certain things, probably  
14 on monitoring the water, for instance. You may say  
15 we have to do it every six months, but again, it's  
16 a dry area and I am familiar with it. There isn't  
17 sufficient water there to monitor to do it every six  
18 months, what do we do, do we get a violation?

19 MR. BELL: You just state you monitored  
20 it and there wasn't any.

21 MR. KINGSTON: It has to be tested and  
22 the tests have to be done by a certified laboratory  
23 to determine if the proper qualities are there.

24 MR. BELL: If you don't have any, then  
25 that eliminates that part of it.

1 MR. KINGSTON: All right. If that could  
2 be made part of the compliance order if there isn't  
3 any water, then we don't have to monitor it, I will  
4 be satisfied.

5 MR. DANIELS: Essentially what is to be  
6 monitored is the storm runoff. It would be on a  
7 regular schedule, and I think monthly is what we were  
8 talking about or whenever precipitation occurs, if  
9 any.

10 MR. CHAIRMAN: Do storms come down there?

11 MR. DANIELS: Every month.

12 MR. KINGSTON: Are you prepared to give  
13 today us some specifics on what we have to comply  
14 with?

15 MR. DANIELS: I can give you the general  
16 outline of what the rules in 717.17 says, and from  
17 that I think we can work out the details.

18 MR. KINGSTON: Is there some procedure  
19 that we can follow here where we can agree to the  
20 compliance after we see what we have got to comply  
21 with as far as the time schedule?

22 DENISE DRAGOO: I think it would be up  
23 to the Board to determine whether they want to issue  
24 a compliance order. We would probably have to wait  
25 until they come up with their order.

1 MR. KINGSTON: I don't know how the Board  
2 can enter a compliance order without knowing what they  
3 are ordering us to comply with. Maybe they are a  
4 lot smarter than I am. I don't know.

5 MR. CHAIRMAN: Denise, it's five minutes  
6 after twelve, how long do you think it will take you  
7 to finish; are you practically through?

8 DENISE DRAGOO: I have completed the  
9 Co-op case. We still have the Blackhawk Mine.

10 MR. CHAIRMAN: No, I'm talking about  
11 this case.

12 DENISE DRAGOO: We've completed our  
13 presentation.

14 MR. JUVELIN: We still have to find out  
15 what Co-op is going to be expected to comply with.  
16 I think Mr. Kingston brings a very good point.

17 MR. BELL: Ron, what in your estimation  
18 are the things they can do to comply with certain  
19 phases. There are some things that they can do now  
20 and some of the things they are going to be limited  
21 to because of the weather conditions and other things.  
22 What framework are we looking at? Can some of it be  
23 done in 30 days and some 60 days and some possibly is  
24 going to take six months before they can complete the  
25 pond and sedimentation and all that stuff? Will you

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1 be willing to make a list with them of the work that  
2 can be done because of the conditions and so we can  
3 have something?

4 MR. DANIELS: In my own opinion, I think  
5 everything can be done in the 90 day period except  
6 possibly the construction of the pond and a construction  
7 of the diversion ditches. That depends on the weather.

8 MR. CHAIRMAN: Ron, bringing up the question  
9 on the time element, maybe you and Mr. Kingston could  
10 agree on the fundamentals of a compliance schedule  
11 during the noon hour and then we can still read it  
12 into the record.

13 MR. DANIELS: I think I can go over that  
14 right now. If there are some questions, we can go  
15 into something during noon. It isn't all that  
16 difficult.

17 MR. KINGSTON: I understand most of the  
18 objections have been taken care of. At least that's  
19 what my people tell me.

20 MR. DANIELS: That's true.

21 MR. CHAIRMAN: If you don't, I understand  
22 you said you could suggest what compliance schedule  
23 would be; do you have one prepared?

24 MR. DANIELS: Just the 30 and the 90 days  
25 that these things would be either committed to or

1 construction be started within this period.

2 MR. CHAIRMAN: Couldn't you go over that  
3 with Mr. Kingston on the lunch hour and have him  
4 pretty well prepared so we can have it read right  
5 into the record after lunch?

6 MR. DANIELS: Okay.

7 MR. CHAIRMAN: If you have another way  
8 of doing it, that would be fine.

9 DENISE DRAGOO: Mr. Chairman, I think  
10 it is set forth in the rules and regulations. He  
11 could probably just point out the appropriate rules  
12 and regulations.

13 MR. DANIELS: Right.

14 DENISE DRAGOO: It seems to me that that  
15 would satisfy the Board.

16 MR. KINGSTON: I don't know if the rules  
17 and regulations specify what in our operations needs  
18 to be done. I think the problem we've got are  
19 specifics on exactly what you are requiring that we  
20 do and by when.

21 MR. DANIELS: Many of these things because  
22 of the nature of the mine, that because it's an under-  
23 ground mine, you can't do it now. You have to  
24 commit to doing them when you finish. Among those  
25 are backfilling of the portal areas, regrading, setting

1 a maximum grade for the grading of the covering over  
2 the coal seam, revegetation.

3 MR. KINGSTON: If it's merely a commitment  
4 you want, I'm sure we can do that. I don't mean that  
5 as an out for my people. I think you will agree that  
6 we have cooperated as much as we can and will continue  
7 to do that. And if it's a commitment on our part of  
8 good faith to do these things as soon as possible,  
9 I'm sure we can do that and make that commitment.

10 MR. FEIGHT: Could I ask Ron Daniels  
11 one question?

12 MR. CHAIRMAN: Certainly.

13 MR. FEIGHT: Mr. Daniels, this isn't the  
14 first time this type of matter has been discussed  
15 with the people from Co-op Mining? Is this the  
16 first time they heard about complying with these  
17 rules and regulations?

18 MR. DANIELS: No, sir.

19 MR. FEIGHT: In other words, we are now  
20 looking at something that took place two to four months  
21 ago. In order to get the cooperation from the part  
22 of the individuals, we had to drag them in before  
23 the Board, isn't that correct?

24 MR. DANIELS: That's correct.

25 MR. FEIGHT: What I'm trying to point

1 out is this isn't something that is brand new, today,  
2 for the first time that Co-op is coming in and  
3 saying "We didn't realize we had to comply with  
4 this?" They've had four or five months in which to  
5 do what we are requesting now. I think when they  
6 sit down with Mr. Daniels and Mr. Smith ought to be  
7 with them due to the fact that he is representing  
8 OSM and work out this compliance schedule, I might  
9 suggest that.

10 MR. CHAIRMAN: I thought when Mr. Daniels  
11 made this recommendation that that was what he was  
12 talking about. Just give them 30 days in which to  
13 respond and if they would need additional time from  
14 now, 90 days to prove the plan. That was your  
15 recommendation, did I understand it correctly, Ron?

16 MR. DANIELS: Yes, that's correct.

17 MR. CHAIRMAN: Wouldn't he need this  
18 sort of a schedule of compliance to go forward with  
19 that?

20 MR. DANIELS: Yes. It would be included  
21 in the plan.

22 MR. CHAIRMAN: I certainly have no objection  
23 to what Jack suggested to get it clear. Do you have  
24 any other suggestion?

25 MR. DANIELS: No.



1 MR. CHAIRMAN: Do you, Denise?

2 DENISE DRAGOO: Perhaps we can come up  
3 with just over the noon hour something describing  
4 the detailed information required and the time frame  
5 in which to submit that information.

6 MR. CHAIRMAN: Yes, the three of them  
7 can get together. Well, let's try it and see what  
8 happens.

9 Jack, I think you wanted to ask a certain  
10 question?

11 MR. FEIGHT: Yes. I just wanted to ask  
12 Mr. Smith a question. When you issue an order of  
13 abatement you shut in the mine, then eventually this  
14 mine is reopened up, do you make another inspection,  
15 is that your intent?

16 MR. SMITH: The notices that were sent  
17 to Co-op Mine were notices for them to shut down.

18 MR. FEIGHT: I'm just asking when it  
19 happens, if it happens?

20 MR. SMITH: The next step, I guess is  
21 following one of these notices of violation. If there  
22 is no corrective action, then an order of cessation  
23 would be issued. That order would require shutting  
24 down the mine; the problem of submitting permit for  
25 the application or constructing a sediment pond or

1 whatever it is. That's totally abated until there  
2 is a sediment pond constructed.

3 MR. CHAIRMAN: Did you explain that  
4 satisfactorily to Jack as to how you open the mine  
5 back up after you once closed it down. I think that's  
6 the basis of his question.

7 MR. SMITH: If there is a reinspection  
8 of the property to see that has been done--

9 MR. CHAIRMAN: --performed by you?

10 MR. SMITH: Performed by our office by  
11 an official representative of the Secretary of  
12 Interior to see that that violation has been totally  
13 abated. When there is, then there is a release.

14 MR. BELL: I have a question. What  
15 magnitude of a violation will be required for you  
16 to determine that you shut a mine down?

17 MR. SMITH: I believe the general guideline  
18 is that the inspector and the office determines there  
19 is an eminent harm to the environment, that there is  
20 an eminent harm to the environment.

21 MR. BELL: In the reverse, if the man  
22 says the creek does not run any water, say the dam is  
23 not completed on schedule, on your schedule, but there  
24 has been no water or no contamination of any kind,  
25 would you shut the mine down at that point because

1 there was no--there was really no damage, yet, they  
2 had not complied to the law because it wasn't completed  
3 to that schedule, what would you do?

4 MR. SMITH: I don't know if I can answer  
5 that question. It is my opinion that you could  
6 determine that there is an eminent environmental harm,  
7 I think the word "eminent" comes into play. You can  
8 issue an order based on the fact that you determine  
9 there is an eminent harm, not necessarily an action.

10 MR. BELL: In other words, it would have  
11 to be pretty serious before you might shut a mine down  
12 where you felt it would contaminate water or contaminate  
13 something that may affect other life or human beings  
14 or cattle or whatever you may determine. Is this  
15 what we are saying?

16 MR. SMITH: I think that's true.

17 MR. FBIGHT: I didn't want to put Mr. Smith  
18 on the spot.

19 MR. BELL: I think we need to know basically  
20 the things that we are up against so we have some kind  
21 of guidelines.

22 MR. SMITH: There are certain procedural  
23 things. There are provisions, if there is total  
24 neglect of the law, I'm sure you realize that in a  
25 case like that you can issue a cessation order. That

1 is when a person shows no intent and there has been  
2 nothing done to correct the problem. Even minor  
3 things in some cases like to correct things like  
4 erosion control which in itself is not an environmental  
5 harm but you do have cases where it is an environmental  
6 harm and in cases like that you can issue a cessation  
7 order.

8 MR. McINTYRE: What production, the  
9 size of the operation, is Co-op Mining?

10 MR. DANIELS: I'm not quite sure, maybe  
11 200,000 tons a year.

12 MR. KINGSTON: Just about 200,000 tons  
13 a year now.

14 MR. McINTYRE: About 700 tons a day?

15 MR. KINGSTON: I don't think it's quite  
16 that high.

17 DENISE DRAGOO: I think that an on-site  
18 inspection indicated there is 100,000 tons of  
19 coal produced annually.

20 MR. KINGSTON: I think it's slightly more  
21 than 100,000. I think that would be pretty accurate.

22 MR. CHAIRMAN: Are there any more questions?

23 DENISE DRAGOO: Could I ask one question  
24 of Mr. Smith?

25 MR. CHAIRMAN: Certainly.

1 DENISE DRAGOO: Earlier you referred to  
2 the 90-day time frame. Should our compliance schedule  
3 stick to that 90 day time frame in order to coordinate  
4 with your efforts?

5 MR. SMITH: I don't think we have any  
6 flexibility on the 90-day period. That 90-day  
7 period begins with the issuance of our notice.  
8 The date of our notices were given on November 9.

9 DENISE DRAGOO: So as of today, we have  
10 90 days, is that correct?

11 MR. SMITH: It's my understanding.

12 DENISE DRAGOO: That's all I have.  
13 Thank you, Mr. Chairman.

14 MR. CHAIRMAN: Let me ask you one further  
15 question. Did you intend to introduce the notice  
16 of violation from your office into the record or  
17 is it here in the file?

18 DENISE DRAGOO: Maybe I should introduce  
19 that.

20 MR. CHAIRMAN: I think it should be  
21 introduced.

22 DENISE DRAGOO: I guess this is Co-op  
23 Exhibit No. 4. This is a letter of November 9 to the  
24 Division of Oil, Gas & Mining from Don Crane, Regional  
25 Director of the Office of Surface Mining, and attached

1 thereto is the Notice of Violation No. 78V1-1, concerning  
2 Co-op Mining Company.

3 If there are no objections, I'll introduce  
4 that into evidence.

5 MR. KINGSTON: I would allow it in but  
6 I would make this one qualification. It's my under-  
7 standing that this is issued simply on the basis of  
8 the state inspection and the results of the state in-  
9 spection for the record Co-op Mining has filed an  
10 objection with the Department of Interior to the  
11 issuance of this order and we haven't requested this  
12 matter be heard. So it has not been determined one  
13 way or the other whether these violations or alleged  
14 violations have occurred.

15 MR. CHAIRMAN: We'll accept it for what  
16 probitive value it has.

17 (Whereupon Co-op Exhibit No. 4 was  
18 marked for identification and received in evidence.)

19 MR. CHAIRMAN: It looks to me like we can  
20 adjourn. We will return at 1:30.

21 (Whereupon a lunch recess was had.)

22 MR. CHAIRMAN: We will proceed. Ms.  
23 Dragoo, do you have a statement for the record?

24 DENISE DRAGOO: For the record, over  
25 the lunch break, we came up with a schedule for

1 compliance. I will prepare that schedule for the  
2 Commission, for the Board, and the Board will approve  
3 it and we will send that order back to Mr. Kingston  
4 who is the attorney for Co-op Mining within three  
5 days of today's date.

6 That schedule for compliance is basically  
7 to obtain two objectives: First, is to design four  
8 sedimentation ponds which is to be submitted ten  
9 days from today's date. After approval of that sub-  
10 mission, the Division will notify Co-op Mining and  
11 within five days of their notification, they should  
12 commence construction of that pond. The second  
13 requirement of the schedule for compliance will be  
14 the submission of the required documents as required  
15 by rules MC 717 and those will be detailed by Ron  
16 Daniels, but that submission has to be made within  
17 30 days of today's date and an approved permit has  
18 to be approved from 60 days of today's date. Ron,  
19 will you discuss those details?

20 MR. DANIELS: Yes. I don't know where  
21 this clean-up deadline that we talked about fits  
22 into that. Should it be one of the special require-  
23 ments or should it be in the 717?

24 DENISE DRAGOO: I think within the 717.

25 MR. DANIELS: Essentially we went over

1 Division rule 717, point 12 through point 20 with  
2 Mr. Kingston, and paraphrasing each one of these  
3 sections, we're asking for, since the nature of  
4 the mine is an underground mine, a lot of those cases  
5 we are asking for a commitment to do something.

6 Under 717.12, the commitment is for signs showing  
7 the name, business and address and telephone number  
8 and ID number of the mine and those signs should be  
9 installed on site.

10 717.14 deals with backfilling and  
11 grading of road cuts, entry areas and other surface  
12 work areas, and among the things we need from Co-op  
13 Mining in regard to this section are a plan for the  
14 backfilling which sets forth some standards for  
15 grading and revegetation and that type of thing, and  
16 the commitment that this will be done as areas are  
17 abandoned on the surface.

18 717.15 sets forth standards for a disposal  
19 of access rock or earth materials. So in other words,  
20 if there is waste rock developed in the mine, it will  
21 be deposited in an orderly fashion and in accordance  
22 with the standards of that section.

23 The most onerous burden of the MC 717  
24 rule is found in 717.17 which is entitled "Whole  
25 Protection of the Hydrologic System." Generally, what



1 we are looking for from Co-op under this section  
2 is a commitment to minimize the disturbance to both  
3 surface and underground waters and a commitment to  
4 treating runoff water from the surface operation.

5 We already have a commitment to obtain an  
6 MPDS permit for discharge water and we have a commit-  
7 ment already that the sedimentation pond will be  
8 constructed.

9 717.17 further outlines the requirement  
10 that a system of monitoring should be set up, and  
11 we will be looking for that in the compliance, and  
12 as a commitment for compliance to the road standards  
13 under this same section.

14 717.20 sets forth the provision for  
15 topsoil handling and revegetation. Essentially the  
16 company will need to commit to conserving topsoil  
17 as it is developed or as it is excavated on the mine  
18 site and commit to stabilizing those topsoil stockpiles  
19 so the piles and the topsoil itself may be utilized at  
20 a later date when the final reclamation takes place.  
21 Further under 717.20, a commitment shall be made by  
22 Co-op Mining to stabilize through the vegetation  
23 and grading surface areas disturbed by the mining.  
24 Along that same vein under 717.20, we decided that  
25 Co-op could show more intent on compliance by cleaning

1 up and stabilizing a stockpile area adjacent to the  
2 Huntington Canyon highway within a certain specified  
3 time period. Do we set the time for that?

4 MR. KINGSTON: I don't believe we set  
5 a time period because that would be contingent upon  
6 working agreements with some other mine that would wash  
7 the coal dust or whatever had to be removed from that area.  
8 We'll get a commitment to commence cleanup and do  
9 it as rapidly as possible based on the conditions.

10 DENISE DRAGOO: Will that be within 60  
11 days then?

12 MR. KINGSTON: I don't think we can  
13 possibly get the coal taken care of within 60 days.  
14 Again, we have to go to Swisher or some other mine  
15 in the area that has a washing plant to take care  
16 of it. We don't have the facilities at our mine  
17 to do that.

18 DENISE DRAGOO: Can you commit to the  
19 compliance within 60 days?

20 MR. KINGSTON: What do you mean by "Commit  
21 to the compliance?"

22 DENISE DRAGOO: Can you come up with a  
23 compliance format, agree that you will comply  
24 within the next year, 60 days.

25 MR. DANIELS: We talked about the

1 concentration of the coal that's on the surface in  
2 one pile or in one area somewhere. I think you  
3 agreed that you could do that within the 60 day  
4 period.

5 MR. KINGSTON: Yes.

6 DENISE DRAGOO: Okay.

7 MR. DANIELS: That coal will be deposited  
8 in an area not subject to erosion or surface runoff.

9 MR. KINGSTON: Yes.

10 MR. CHAIRMAN: Ron, how far is that  
11 stockpile removed from the mine?

12 MR. DANIELS: Essentially it's on site.

13 MR. CHAIRMAN: It is essentially on site?

14 MR. DANIELS: Between the highway and  
15 the mine portal itself.

16 DENISE DRAGOO: Does that complete the  
17 MC 717 requirements?

18 MR. DANIELS: Right.

19 DENISE DRAGOO: Finally, we would ask  
20 the Board to order that upon the completion of the 60  
21 days given in this order that the operator be required  
22 to appear at the next most convenient Board hearing  
23 to demonstrate the compliance and show cause as to  
24 why the Board should not be issued an immediate cessation  
25 order of mining activities.

1 MR. CHAIRMAN: Denise, will you state  
2 that again. I'm not sure I know what you said.

3 DENISE DRAGOO: We would ask the Board  
4 to order in addition to the compliance order that  
5 Co-op Mining appear before the Board to demonstrate  
6 compliance, order to show cause why the Board should  
7 not issue an immediate cessation order to close down  
8 the above mining operation.

9 MR. KINGSTON: I don't know if that would  
10 be required unless the state or some other agency  
11 gives us notice that we haven't complied. If we  
12 receive notice that something is deficient in these  
13 things that we agree to, why then we certainly would  
14 have to come and show why we haven't done it. If  
15 we meet the qualifications of the compliance order,  
16 why we shouldn't have to come in here and say we've  
17 done it.

18 DENISE DRAGOO: I think in a way the  
19 burden is on Co-op Mining right now to demonstrate  
20 that these things have been done, and basically if  
21 that demonstration isn't made to us, perhaps by the  
22 Board meeting two months from today that then you  
23 should appear to show cause as to why a cessation  
24 order should not be issued.

25 MR. KINGSTON: I don't know if the Board

1 would want to be bothered with that or not.

2 MR. CHAIRMAN: I'm wondering if we are  
3 not getting into some staff work. The Division has  
4 the responsibility under our statute for requiring  
5 that and the Board doesn't have. I think that can  
6 be handled by putting the responsibility where the  
7 statute puts it on the staff and see that they are  
8 in compliance within 60 days.

9 DENISE DRAGOO: Well then, I amend that  
10 to the extent that if the Division cannot obtain that  
11 compliance from Co-op within a 60 day period that  
12 then at that point that as a condition of this  
13 compliance order that Co-op be required to appear again  
14 to show cause why an immediate cessation order should  
15 not be issued.

16 MR. KINGSTON: Again, I think that could  
17 be done independently by a motion of the department.  
18 It would not necessarily have to be made part of  
19 this order.

20 MR. BELL: What she is really trying to get  
21 at if the staff finds that at the end of the 60 day  
22 period this has not been met and the compliance has  
23 not been done, then it would be the staff's direction  
24 to the Board that this has not been followed through  
25 and, therefore, it lays it back in our hands to proceed

1       however we think there has been a violation in  
2       relation to the order.  Isn't that what you're trying  
3       to say?

4               DENISE DRAGOO:  Yes.  I'm trying to get  
5       Co-op a chance or opportunity for due process,  
6       basically.

7               MR. BELL:  If they say they haven't  
8       completed the thing and they have been working at  
9       it, then the staff feels that maybe they better come  
10      in and report to the Board then that would be up  
11      to the staff to notify them to come in.  But if there  
12      isn't any particular reason for them to come in,  
13      then there's no reason for them to come in.  I think  
14      it should be up to the staff whether they come back  
15      and make a report to the Board.

16              DENISE DRAGOO:  Yes.

17              MR. CHAIRMAN:  Mr. Smith, were you  
18      wanting to say something?

19              MR. SMITH:  I would like to comment on  
20      my understanding of our discussion during the lunch-  
21      break, and it was my understanding that what Denise  
22      is proposing here is setting somewhat an in point  
23      the best way we are able to set that in point now is  
24      by saying if Co-op Mine has not come in by a certain  
25      time and has not been diligent in doing what we were

1 talking about doing here today, then at that in point  
2 then there will be more or less an automatic order of  
3 cessation unless Co-op comes to the Board and shows  
4 otherwise that they have been diligent and there have  
5 been problems. I would endorse that approach myself.

6 MR. CHAIRMAN: That would be inherent  
7 in this order the way she has drawn it to have 60  
8 days within which to make that compliance. I think  
9 it would be encumbant upon us to take action in 60  
10 days if they haven't.

11 MR. SMITH: Isn't it possible that this  
12 meeting today that you could come up with an order  
13 that said without a further notice of the Board if  
14 the staff determines that Co-op was not diligent  
15 without another hearing being held, the staff determined  
16 whether Co-op was not diligent in trying to comply  
17 with that order, then there would be an order of  
18 cessation issued automatically without another Board  
19 hearing unless it is appealed by Co-op.

20 MR. CHAIRMAN: I can't answer your  
21 question that openly.

22 MR. SMITH: I think that is essentially  
23 what we talked about in the lunch break.

24 DENISE DRAGOO: I was just trying to  
25 essentially give them one more opportunity for a

1 hearing. In other words, a notice that they have  
2 go come forward and show why we shouldn't go ahead and  
3 get the cessation order, and if there is a misunderstand-  
4 ing maybe that would give Co-op a chance to clarify  
5 that at that point.

6 MR. DEWSNUP: How about a compromise?  
7 How about putting it in the order now, a provision  
8 if this compliance as scheduled is not fully met by  
9 your January meeting, is that 60 days from now,  
10 roughly?

11 MR. CHAIRMAN: Yes.

12 MR. DEWSNUP: Then at that meeting Co-op  
13 be required to appear to show cause at that meeting  
14 why a cessation order should not be issued. Then  
15 you have a built in notice of your next hearing if  
16 they comply, it becomes moot and if they don't, then  
17 you'll probably have to issue a new notice. What would  
18 you think of that kind of a compromise?

19 MR. KINGSTON: I wouldn't have any objection  
20 to that as long as we do receive the notice that you  
21 feel like we're out of compliance. We will have the  
22 obligation to come in and appear and explain it at  
23 the hearing.

24 MR. DEWSNUP: If you don't have your permit  
25 by then, you will know you haven't met the compliance.



1 DENISE DRAGOO: That's right.

2 MR. CHAIRMAN: Ron has a question.

3 MR. DANIELS: I think it's self-evident  
4 to those of us working day to day on the approval  
5 of mining and reclamation plans, but one of the  
6 conditions, of course, is the posting of surety to  
7 cover the reclamation. I just thought that should  
8 be entered into the record that the actual posting  
9 of surety should take place as soon as the final  
10 approval is issued.

11 MR. CHAIRMAN: That amount has not  
12 been agreed upon as yet.

13 MR. DANIELS: That's right.

14 MR. CHAIRMAN: All right.

15 MR. JUVELIN: I have a comment. One of  
16 the things in all of the discussions of whether or  
17 not there should be a hearing in 60 days, I would  
18 think that it would be Co-op's place if they were  
19 out of compliance to request a hearing. I don't  
20 think there should be an automatic hearing set up.  
21 If Co-op feels that there is no way that they can  
22 comply, then the burden is on them to approach us  
23 for a hearing to show cause why because there would  
24 automatically be a notice of cessation after 60  
25 days if they are not in compliance. It seems to me

1 this is inherent in the notice that they have received.  
2 We don't have that much option. There will be a  
3 notice of cessation at the end of 60 days unless  
4 Co-op can come in and show cause why that notice  
5 should not be forthcoming. Certainly the staff is  
6 going to be in contact with the Co-op people during  
7 that 60 day period. So Co-op is going to be fully  
8 aware of that if they are not in compliance.

9 MR. DEWSNUP: That raises a due process  
10 question. The Board will not have had the time to  
11 hear the evidence and make its findings and conclusions.  
12 Maybe I misread you.

13 MR. KINGSTON: That's what I was  
14 getting to.

15 MR. DEWSNUP: What I said was intended  
16 to avoid getting into a headon on those kind of  
17 due process considerations. I think there is a  
18 problem there.

19 MR. JUVELIN: I have no objection to the  
20 suggestion you made. I think it's a good one.

21 MR. DEWSNUP: If we leave it to them to  
22 have the hearing, he may decide not to have a hearing  
23 unless a cessation order does issue, then there is  
24 no way you can get them back to the snubbing post  
25 unless you proceed yourself.

1 MR. JUVELIN: If we don't issue a  
2 cessation order, OSM will, if there is no compliance.

3 MR. DEWSNUP: Whatever you do, I think  
4 it should be structured in the state's interest  
5 and the public's interest and your interest in  
6 handling the matters as you think they should be  
7 handled not advocate what OSM may do or not do.  
8 Nor do I think you should take any action you think  
9 you should take just to please OSM. I don't think  
10 they should shotgun you into something that is not  
11 appropriate. Nor do I think you should advocate  
12 that if they don't get around to it OSM will come  
13 along and do it.

14 MR. CHAIRMAN: It looks like everybody is  
15 in agreement with that. I don't hear anybody objecting.

16 MR. KINGSTON: There's one other qualifi-  
17 cation that should be made on the stipulation that  
18 was outlined by Ms. Dragoo; This is on the 5 day  
19 time period in which Co-op mine had to commence  
20 construction of the sedimentation pond after notice  
21 from the state. The state not only has to notify us  
22 that the plan has been approved, but they also have  
23 to give us authority to commence, and that will be  
24 based on, as I understand it, the soil conditions at  
25 the time. In other words, if the soil conditions do

1 not permit immediate commencement of the constructive  
2 process, then they won't allow us to go ahead and  
3 start constructing the sedimentation pond.

4 MR. CHAIRMAN: Is there any problem with  
5 that? I think that would be practicable. All right.  
6 We will assume that will be the way to handle it.

7 Is there anything further? (No response.)  
8 If not, you can prepare the order and we will cir-  
9 culate it, and it will be in effect from now on.  
10 Thank you very much.

11 (Whereupon the hearing concluded in the  
12 above-entitled matter.)  
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C E R T I F I C A T E

STATE OF UTAH )  
COUNTY OF SALT LAKE)

I, ATHENA MOORE, do hereby certify that  
I am a Certified Shorthand Reporter and Notary Public  
in and for the State of Utah; that as such reporter I  
attended the above-entitled matter and thereat reported  
in Stenotype all the testimony, evidence and proceedings  
had therein; that thereafter I caused to be transcribed  
my said stenographic notes into typewriting, and the  
foregoing constitutes a full, true and correct  
transcription of the same, to the best of my ability.

DATED at Salt Lake City, Utah, this 11<sup>th</sup>  
day of December 1978.

Athena Moore  
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Certified Shorthand Reporter  
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7/1/81